

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
03 OCT 27 PM 4:23
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

CASE NO.: 8:03-CR-77-T-30-TBM

**CONSOLIDATED RESPONSE OF THE UNITED STATES
TO THE VARIOUS DEFENDANTS' MOTIONS FOR A BILL OF PARTICULARS**

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, submits the following consolidated response to the defendants' motions for Bill of Particulars:

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, each defendant has filed a motion for a bill of particulars. (Docs. 193, 296, 252, 272, 287, and 312.) The granting or denial of a bill of particulars is addressed to the sound discretion of the District Court. Wong Tai v. United States, 273 U.S. 77, 82 (1927); United States v. Colson, 662 F.2d 1389, 1391 (11th Cir. 1981). On appeal of a denial of the motion, to establish abuse the defendant must show actual surprise at trial and prejudice to the defendant's substantial rights. Id. at 1391. In this case, for the reasons stated below, the Court should deny each and every motion for a bill of particulars in its entirety.

34

A. General Discussion

It is appropriate to begin the legal analysis with a discussion of the purpose of a true bill of particulars as expressed by the Eleventh Circuit:

The purpose of a true bill of particulars is threefold: (1) to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense; (2) to minimize surprise at trial; and (3) to enable him to plead double jeopardy in the event of a later prosecution for the same offense.

United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986), citing United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985). The Eleventh Circuit in Anderson further held:

A bill of particulars, properly viewed, supplements an indictment by providing the defendant with information necessary for trial preparation.

Id. at 1441 (emphasis in original). Thus, it is intended to give the defendant only the minimum amount of information necessary to permit the defendant to conduct his own investigation. United States v. Smith, 776 F.2d 1104, 1111 (3d Cir. 1985). According to Anderson, the purpose of a bill of particulars is not to provide "generalized discovery." Id. at 1411.

There is a brief history of the origins of a bill of particulars in Smith, 776 F.2d at 1111. The Third Circuit in Smith found that a bill of particulars is closely related to the indictment. Apparently, there was a time when indictments set forth the crime in great detail and there was no need for supplements. Later, indictments began to take the form of skeletal accusations and Fed. R. Crim. P. Rule 7(f) was passed as a liberalized means of providing access to the defendant of omitted details if the defendant had a legitimate need for them. The Third Circuit also noted the placement of a bill of

particulars in the rule governing the nature and contents of indictments, and it contrasted the language of Rule 7(f) with the language of Rule 16 of the Federal Rules of Criminal Procedure. In considering this history, the Third Circuit then concluded, as did the Eleventh Circuit in Anderson, that a bill of particulars should be regarded as a supplement to the indictment rather than as a form of pretrial discovery.

If a true bill of particulars acts as a supplement to an indictment, then its contents should conform to, and be defined by, the requirements for an indictment. Fed. R. Crim. P. 7(c)(1) provides that an indictment "must be a plain, concise and definite written statement of the essential facts constituting the offense charged." An indictment sets forth "essential facts" charging a crime. An indictment does not set forth the government's evidence or its theories as to how that evidence proves the crime. A true bill of particulars should only supply the defendant with missing "essential facts" describing the crime which are necessary to prepare a defense, avoid surprise, and to plead double jeopardy. However, if the contents of an indictment already meet this test, then a bill of particulars is unnecessary.

The analysis then moves to what the purpose of a bill of particulars is not. There is a considerable amount of case law on this issue and it is well-settled. "A bill of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the government's investigation." Smith, 776 F.2d at 1111. As a general rule, an inquiry into the government's legal or evidentiary theory as to the means by which the defendant committed a specific criminal act is not a proper purpose of a bill of particulars. See, e.g., United States v. Addonizio, 451 F.2d 49, 64 (3d Cir. 1971), cert. denied, 405 U.S. 936 (1972); United States v. Leonelli, 428 F. Supp. 880, 882

(S.D.N.Y. 1977). The purpose of a bill of particulars is to inform the defendant of the nature of the charges, not to allow the defendant a detailed disclosure of the government's evidence prior to trial. United States v. Perez, 489 F.2d 51, 70-71 (5th Cir. 1974).

There are also several practical consequences flowing from an order directing the government to file a bill of particulars. First, the particulars furnished by the government may confine the government's theory of proof, as the defendant is entitled to rely upon the statements contained in the bill of particulars in the same way the defendant is entitled to rely upon the allegations in the indictment. Therefore, if the government's proposed proof varies from the statements made in the bill of particulars, the defendant could use the bill of particulars to argue to restrict the government's proof. See, e.g., United States v. Flom, 558 F.2d 1179, 1185-86 (5th Cir. 1977). In Flom, the government voluntarily provided the defendants with a bill of particulars describing the type of proof it intended to offer relating to a certain issue. At trial, the government changed its mind. The Fifth Circuit reversed, finding prejudice. But, in accordance with the legal principle discussed above in Smith, Addonizio and Leonelli, the bill should not have been issued, whether voluntarily or not, in the first place. The government should not be so unduly restricted in the proof it presents at trial.

Flom is not the only case in this jurisdiction where the filing of a bill of particulars itself created legal problems. In those cases, however, the Fifth Circuit held there was no reversible error. See, e.g., United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978) (the government supplied an incomplete and erroneous bill of particulars); United States v. Horton, 526 F.2d 884, 887 (5th Cir. 1976) (the government supplied a bill of

particulars listing one method of proof and then allegedly used a different method). These cases strongly suggest that this Court should exercise its discretion with great caution or else potentially it will just be replacing a perceived problem with an indictment with a controversial bill of particulars.

Second, as stated previously, a true bill of particulars is not a discovery device. To allow the bill of particulars to serve as a wholesale discovery device would actually frustrate the federal discovery rule. Fed. R. Crim. P. 16(a)(2) imposes restrictions on discovery of internal government reports and witness statements. A defendant cannot bypass the restrictions on discovery imposed by Rule 16 by labeling the request a "bill of particulars." Anderson, 799 F.2d at 1442; United States v. Pena, 542 F.2d 292, 294 (5th Cir. 1976).

The next issue is the impact Rule 16 discovery has on the decision to order the filing of a bill of particulars. Legally, it should have no impact. As stated previously, a true bill of particulars is designed to address vagueness in the "essential facts" setting forth the crime in the indictment. Discovery is designed to provide the parties with information about the opponent's anticipated proof of facts at trial. They are separate. But, at a practical level, there is a connection. Courts have recognized that a defendant's request for a bill of particulars can be satisfied by a reasonably detailed indictment and the government's compliance with Rule 16 discovery.

The purposes of a bill of particulars are to minimize the danger of surprise at trial and to provide sufficient information on the nature of the charges to allow preparation of a defense (citations omitted).

These purposes are served if the indictment itself provides sufficient details of the charges and if the government provides full discovery to the defense. The indictment in this case is reasonably detailed and (the

defendant) makes no allegation that full discovery was not afforded pursuant to Fed. R. Crim. P. 16.

United States v. Mitchell, 744 F.2d 701, 705 (9th Cir. 1984). Similarly, in United States v. Glecier, 923 F.2d 496, 501-02 (7th Cir. 1991), the defendant was charged with a broadly-worded RICO conspiracy. The district court denied the defendant's request for a bill of particulars, noting that the indictment was clear, the government had provided voluminous discovery, and the request itself was more in the nature of a request for evidentiary detail. The Seventh Circuit affirmed the denial of the request.

This case involves several conspiracy charges. Conspiracy charges can cover large amounts of time, many participants, and a variety of objects and methods. Nevertheless, on numerous occasions in cases involving conspiracy charges, courts have rejected a defendant's request for a bill of particulars. In many cases, the court held that the request improperly sought evidentiary detail. In some cases, the court held that the request improperly sought the government's legal or factual theory. Many of the requests in this case are the same, or very similar to, the requests denied in these cases. A sample of such cases is presented below.

In United States v. Colson, 662 F.2d 1389, 1391 (11th Cir. 1981), the defendant was charged in a drug trafficking conspiracy. The defendant moved for a bill of particulars seeking: (1) the identities and addresses of unindicted co-conspirators; (2) dates and locations of alleged acts in furtherance of the conspiracy; and (3) detailed information relating to quantities of controlled substances and their chain of custody. The trial court denied the motion and the Eleventh Circuit affirmed. In doing so, the appellate court held that the defendant had failed to demonstrate any surprise or

prejudice. The record showed that the defendant had knowledge of the identities of the unindicted co-conspirators. The appellate court also held that since the government was permitted to prove overt acts not specifically alleged in an indictment, the defendant could not establish prejudice even if he did not know of them.

In United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985), the defendant was charged in a drug trafficking conspiracy. Except for certain information about co-conspirators, the trial court denied the defendant's request for a bill of particulars. The Eleventh Circuit affirmed. In rebuffing the defendant's claim on appeal of prejudice and surprise, the appellate court noted that the evidence presented by the government at trial consisted largely of conversations and activities in which the defendant participated. See also United States v. Cantu, 557 F.2d 1173 (5th Cir. 1977), cert. denied, 434 U.S. 1063 (1978) (same holding).

In United States v. Sherriff, 546 F.2d 604, 606 (5th Cir. 1977), the defendant was charged with theft and conspiracy to commit theft. The defendant moved for a bill of particulars seeking the exact location of the alleged illegal sales. The trial court denied the request and the Fifth Circuit affirmed. The appellate court held that the indictment adequately informed the defendant of the charges against him, and the motion was an improper request to discover the government's evidence before trial.

In Perez, 489 F.2d at 70-71, the defendants were charged with conspiracy to commit fraud in connection with staged automobile accidents. In their request for a bill of particulars, the defendants sought: (1) the overt acts not listed in the indictment; (2) the names and address of participants in fraudulent transactions; and (3) the exact locations and times of the various fraudulent transactions. The trial court denied the

request and the Fifth Circuit affirmed. The appellate court held that the government was permitted to prove overt acts not alleged in the indictment, the government's discovery was adequate to remove surprise or prejudice, and the motion was in fact just a request for detailed discovery.

In Wong Tai, 273 U.S. at 81-82, the defendant was charged with a drug trafficking conspiracy. The defendant claimed the indictment was vague, indefinite and uncertain. The defendant moved for a bill of particulars requesting various specifications as to times, places, names of persons, quantities, prices, containers, buildings, agencies, and instrumentalities, and the manner in which and the specific circumstances under which they were committed. The trial court denied the request because it sought evidentiary detail and the Supreme Court ultimately affirmed. In disposing of the case, the Supreme Court also announced an important legal principle with respect to conspiracy allegations:

It is well settled that in an indictment for conspiring to commit an offense -- in which the conspiracy is the gist of the crime -- it is not necessary to allege with technical precision all the elements essential to the commission of the offense which is the object of the conspiracy.

Id. at 301-02. Given the number of requests, this legal principle seems to have escaped the notice of the defendants in this case.

In United States v. Heldon, 479 F. Supp. 316, 323 (E.D.P.A. 1979), the defendant was charged with a drug trafficking conspiracy. The defendant moved for a bill of particulars seeking a variety of specifications. The trial court denied the motion, holding that the defendant was not entitled to the government's legal theories or evidentiary details, citing United States v. Peifer, 474 F. Supp. 498, 501 (E.D.P.A. 1979).

Finally, in United States v. Ayers, 924 F.2d 1468, 1483 (9th Cir. 1991), the defendant alleged in a motion for a bill of particulars that the charges in the tax fraud indictment were vague and failed to give him fair notice. The trial court denied the motion on the grounds that the indictment specified five separate means and methods to carry out the conspiracy, the indictment set forth 15 overt acts, and the government provided the defendant with a "significant amount of discovery." Id. at 1484. The Ninth Circuit affirmed.

B. The Indictment in This Case

Turning to this case, let us first put the various requests for bills of particulars into the proper perspective. The 50 count indictment in this case runs for 121 pages. Count One, charging a RICO conspiracy similar in form to the indictment in Glecier, consumes the first 84 pages. The first 23 paragraphs contain definitions and descriptions of terms, players and events. Paragraphs 24 and 25 describe the unlawful enterprise. Paragraphs 26 and 27 specifically allege the seven types of violations which were the criminal objects of the enterprise's racketeering activities. Paragraphs 28 through 42 allege the manner and means by which the defendants committed the RICO conspiracy, as permitted by Fed. R. Crim. P. 7(c)(1). Paragraph 43 alleges 256 overt acts, which themselves are particulars about the crime charged. The overt acts are definite in terms of people, places, events, and time. Count Two incorporates Parts A, D and E of Count One, as permitted by Fed. R. Crim. P. 7(c)(1). Count Three incorporates portions of Parts A and E of Count One and also alleges a separate manner and means running for 22 paragraphs. Count Four incorporates portions of Count One as well, and also separately sets forth an introductory section. Counts Five

through Forty-Four incorporate portions of Count One (including some of the overt acts) and otherwise allege all the elements of the crime charged. Counts Forty-Five through Fifty are also extremely detailed.

Not only have the defendants received an extremely detailed indictment, but the government has also agreed to disclose thousands of pages of documentary information and thousands of hours of FISA intercepts. The government prepared an index describing the discoverable items and tendered it to the defense. The index itself contains over 17,000 entries and runs for more than 400 pages.

Notwithstanding the 121 page indictment with 256 detailed overt acts contained in Count One, the defendants claim the indictment is so deficient that 580 particulars should be supplied to them by government (Al-Arian - 377; Hammoudeh - 93; Ballut -11; and Fariz -99). The sheer number of requests belies the strength of their arguments.

C. Defendant Fariz

Defendant Fariz's motion for a bill of particulars contains no less than 99 requests. Defendant Fariz begins his legal analysis by making the following assertion in his pleading:

With respect to the allegations of conspiracy in the indictment, a bill of particulars is the appropriate manner in which to require the government to specify with particularity the "time, place, circumstances, causes, etc., in stating the manner and means of effecting the object of the conspiracy. Glasser v. United States, 315. U.S. 60, 66 (1942).

Doc. 252 at 18-19. Based on the quote, defendant Fariz suggests that Glasser stands for the proposition that in conspiracy cases, a bill of particulars is the unconditionally appropriate vehicle in which to provide details. But what the Supreme Court actually said in Glasser was this:

The particularity of time, place, circumstances, causes, etc., in stating the manner and means of effecting the object of a conspiracy, for which petitioners contend, is not essential to an indictment (citations omitted). Such specificity of detail falls rather within the scope of a bill of particulars, which petitioners requested and received.

Glasser, 315 U.S. at 66. Thus, the issue confronting the Supreme Court in Glasser was the legal sufficiency of a generally written indictment, not the appropriateness of a bill of particulars as suggested by defendant Fariz. A fairer reading of Glasser would be this: if the indictment itself contains specificity of detail, although not legally required per Glasser, then a bill of particulars is not necessary or appropriate. The indictment in this case has sufficient specificity of detail to obviate the need for a bill of particulars.

Fariz also relies heavily on the Southern District of New York's opinion in United States v. Bin Laden, 92 F. Supp.2d 225 (S.D.N.Y. 2000) to support his requests. Bin Laden, however, actually counsels against granting Fariz's motion.

The Bin Laden court decided that the complexity of charges in that case, combined with their geographic and temporal scope, might necessitate more information via a bill of particulars than otherwise would be appropriate, as the indictment "imposed a seemingly unprecedented and unique burden on the defendants and their counsel in trying to answer the charges . . . made against them." 92 F. Supp. 2d at 235. Fariz characterizes the charges against him as similarly complex and far-reaching and therefore argues that his motion should be granted.

Fariz also complains that the government must file a Bill of Particulars because it has provided him with voluminous discovery, claiming that "[a]lthough adequate discovery generally argues against ordering the filing of a bill of particulars, the courts

have made clear that voluminous discovery argues in favor of granting such a motion.” Motion at 21. Fariz misreads his cases. In every case he cites (Motion at 21-22), the court ordered a bill of particulars with reference to the volume of discovery only because the information pertinent to the charged conduct had been “buried” amongst an avalanche of evidence relating to similar, but innocent conduct, and the indictment gave no clue as to which conduct was allegedly criminal. For example, in United States v. Bortnovsky, 820 F.2d 572 (2d Cir. 1987), the indictment charged defendants with submitting false documents without identifying those documents, and the government then provided more than 4,000 potentially false documents. The defendant was therefore forced to prepare his defense by disproving numerous charges never actually levied against him. Similarly, in United States v. Nachamie, 91 F. Supp. 2d 565 (S.D.N.Y. 2000), the indictment charged defendants with filing false Medicare claims without identifying those claims, and the government then produced 200,000 pieces of paper relating to 2,000 potentially false claims.

In contrast, the indictment in this case sufficiently identifies each charged crime with reference to particular actions. Thus, the anticipated discovery does not threaten to obscure those crimes with innocent conduct indistinguishable from the criminal conduct charged. The volume of discovery is entirely necessary in light of the numerous overt acts and crimes charged and does not invite an otherwise inappropriate Bill of Particulars.¹

¹Fariz also complains that “[a]ll or most of the telephone and video recordings in this case are in Arabic, which makes them particularly burdensome to review.” Motion at 23 n.2. This claim makes no sense, as the recordings referred to are of the defendants themselves; i.e., defendants certainly can understand and review those

Fariz fails to realize, however, that even under its arguably “relaxed” approach, the Bin Laden court flatly rejected his type of requests. The court denied all requests for information regarding overt acts when those acts were already identified by general time and place. 92 F. Supp. 2d at 238, 240. It also denied any request for details regarding the formation of the charged conspiracy and defendants’ actions in joining the conspiracy, explaining that such information need not even be proven and thus that a bill of particulars might “unduly restrict the Government’s proof.” Id. at 242-43 (citations omitted). And it rejected any request to explain how defendants’ acts had furthered the conspiracy, stating it was “not necessary to the Defendants’ preparation to have such information.” Id. at 243.²

The Bin Laden court further declined to order the government to specify what activities were performed by the defendants which were in furtherance of the conspiracy, and what roles each defendant played in the conspiracy, on the following basis:

The jury is entitled to draw influences about whether and how particular activities furthered a conspiracy without direct proof from the government. We do not believe it is appropriate, therefore, to require the government to articulate in a bill of particulars the way in which certain adequately identified activities furthered a conspiracy.

recordings, in most cases more easily than has the government. In any event, a defendant is not entitled to a Bill of Particulars simply because he faces a defense investigation of transactions in a foreign language.

²The court also noted that in this instance, the scope of the charged conspiracy worked against defendants’ requests, as it would be “unduly burdensome” to require the government to provide such detail. 92 F. Supp. 2d at 243.

Id. at 236 n. 22. The court further denied requests for particulars regarding the "background" section of the indictment because the paragraphs there were only definitional. Id. at 243. Finally, the court denied a request of one of the defendants for the government to specify what the defendant actually did to further the criminal activity charged on the grounds that the government is not required to articulate how each defendant's activity furthered the criminal activity charged. "Whether acts furthered the bombings is an inference to be drawn by the jury based on the government proof of the defendant's conduct." Id. at 244.

A great number of Fariz's requests seek the same evidentiary detail and information concerning the government's case as those denied in Bin Laden. See Fariz requests CT 1: 2-4, 7, 19-46; CT 2: 1, 3, 5-7, 9-26; CT 3: 1-3, 5-7-11; CT 4: 1-3, 5; CT 5-44: 1-4 (seeking evidentiary detail); Fariz requests CT 1: 5-6, 8-18; CT 2: 4, 8; CT 3: 6; CT 4: 6; CT 5-44: 5-7) (seeking information regarding government's legal theories). They should likewise be denied, not only under precedent binding on this Court, but also under the Bin Laden approach.

Indeed, the Bin Laden court granted only two circumscribed sets of requests, neither of which is relevant to this case. First, although the court denied all requests for information regarding overt acts for which the indictment already provided an identifying date, location, or type of conduct sufficient to focus attention on that act, id. at 238-39, the court granted a very few requests for identifying information for overt acts alleged "in general terms that refer to so broad a class of activity that they would require an exceedingly extensive investigation by defense counsel." See, e.g., id. at 236 (granting request for information alleged act constituted only of "engaging in travel"

without specifying dates or destinations); id. at 236 (granting request when alleged overt act consisted of “conducting business” without any information concerning what business and where). Likewise, although the court denied all requests to identify particular “coded correspondence” when the indictment provided a date or location of the correspondence, it granted one request for further information concerning “coded correspondence” when the indictment had failed to provide any identifying information whatsoever. Id. at 240. The court also granted a few requests for more information when the indictment alleged a particular type of overt act that was “included but not limited to” particular travel dates or business transactions. Id. at 237-40.

The indictment in this case contains no such allegations of unidentified or non-inclusive overt acts. To the contrary, it provides more than sufficient identifying information such as date, time, persons involved, etc., to allow defense counsel to investigate each act. Thus, Bin Laden provides no support for Fariz on this count.

The Bin Laden court also, noting that the government had alleged that various unindicted co-conspirators used multiple aliases or code names, granted a request to identify the co-conspirators so that the defense would not overlook information about the co-conspirators. Id. at 241.

That brings the discussion to the issue of the identification of unindicted co-conspirators. (Fariz requests CT 1: 1, CT 2: 2, CT 3: 4, CT 4: 4.) In Bin Laden, the court recognized that the Second Circuit has affirmed the granting and denial of requests for the identification of unindicted co-conspirators. Id. at 241 n. 26. The Eleventh Circuit, however, at most recognizes the utility of a Bill of Particulars for discovering the names of co-conspirators when the government actually plans to call

those co-conspirators as witnesses. See United States v. Barrentine, 591 F.2d 1069, 1077 (5th Cir. 1979). It has not endorsed the habitual use of a Bill of Particulars to discover the names of co-conspirators pretrial. See Anderson, 299 F.2d at 1441-42 (noting that if used to discover names of co-conspirators, a Bill of Particulars might be used to bypass Fed. R. Crim. P. 16(b)); Colson, 662 F.2d at 1391 (affirming denial of motion for bill of particulars seeking names of co-conspirators when defense clearly not surprised at trial by co-conspirators' identities).³

In any event, defense counsel in this case already possess more than enough information to identify any co-conspirators listed but unnamed in the indictment. The indictment provides particular identifying information about co-conspirator Number 12 in paragraph 14 of Count One. Every other co-conspirator is identified by reference either to particular communications involving one or more of the defendants in this case or to some document described in the indictment; thus, the defendants obviously can determine the identity of the co-conspirators to investigate them further. Indeed, defendant Al-Arian, at the hearing before this Court on September 12, 2003, acknowledged that he already knows the identity of his co-conspirators, as he complained about references to them in the indictment. Fariz's counsel was at that hearing and can obtain the information from Al-Arian if he does not wish to conduct an investigation himself. There is, therefore, no risk of surprise to defendants at trial regarding the identities of their co-conspirators, and this Court should deny their requests pertaining thereto. See Colson, 662 F.2d at 1391.

³Note that in United States v. Briggs, 514 F.2d 794 (5th Cir. 1975), the court of appeals ordered all names of co-conspirators expunged from indictment itself.

D. Defendant Al-Arian

Defendant Al-Arian's Amended Motion for a Bill of Particulars lists 377 requests. Doc. 272, 287. It is accompanied by no supporting memorandum of law. The motion should be denied in its entirety for all the reasons stated above by the government in this responsive memorandum. Most of defendant Al-Arian's requests amount to seeking wholesale discovery of the government's evidence or its legal or factual theories. These improper requests can be identified through the inclusion of the terms, "what," "when," "where," or "how" in them. Some of defendant Al-Arian's requests seek particulars about what activities the defendant committed furthered or promoted the crimes charged, or how those activities furthered or promoted the crimes charged. As the Bin Laden court made clear, these are inferences for the jury to draw from the evidence offered at trial and such requests should not be the subject of a bill of particulars. Bin Laden, 92 F. Supp.2d at 236 n. 22, 243-44.

Some of defendant Al-Arian's requests seek particulars about the content or interpretation of the summaries of the FISA intercepts alleged as overt acts in the indictment. The defendants have or will receive verbatim copies of all the FISA intercepts as part of discovery. Not only are these improper requests for mere evidentiary detail, but they illustrate what is fundamentally wrong with defendant Al-Arian's entire motion. He is converting a motion for a bill of particulars in a criminal case into something more resembling requests for admissions or interrogatories found in discovery practice in civil cases.

Defendant Al-Arian even seeks specifications regarding the paragraphs in Part A of Count One of the Indictment (Introduction). (Al-Arian requests 1-40.) These

introductory paragraphs are definitional in nature. They are helpful to the jury but do not technically constitute a criminal charge to which the defendant must answer. Therefore, defendant Al-Arian does not need further detail. See Bin Laden, 92 F. Supp.2d at 243. Moreover, most of the requests simply seek evidentiary detail in any event, which makes the requests improper.

Defendant Al-Arian also seeks the names of unindicted co-conspirators. (Al-Arian requests 151, 160, 165, 206, 299, 230, 234, 240, 241, 245, 247, 262, 271, 273, 275, 277, 278, 281, 283, 287, 290, 296, 299, 304, 306, 317, 319, 376.) For the reasons stated above in response to defendant Fariz's motion, defendant Al-Arian's request should be denied.

Finally, Al-Arian seeks specification of every overt act not enumerated in the Indictment. (Al-Arian request 377). This request should be denied.

There is no general requirement that the government disclose in a bill of particulars all the overt acts it will prove in establishing a conspiracy charge.

United States v. Carroll, 510 F.2d 507, 509 (2d Cir. 1975). See also United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978); United States v. Armocida, 515 F.2d 49, 53 (3d Cir. 1975); Perez, 489 F.2d at 70.

E. Defendant Ballut

Defendant Ballut's requests for particulars are found in paragraphs 6, 11, 17 and 22 of his motion. Doc. 193. The general law applicable to these requests has been set forth previously. Many of defendant Ballut's requests are similar to those denied in Bin Laden.

Requests 6(a), 11(a), 17(a), and 22(a) are requests for specification of particulars which need not be alleged in the indictment nor proved at trial, and therefore should be denied. Bin Laden, 92 F. Supp.2d at 242-43.

Requests 6(b), 17(b), and 22(b) are requests for the government's legal and factual theories, not particulars about the crime charged, and therefore should be denied.

Requests 6(c), 11(b), 17(c) and 22(c) are requests for evidentiary detail and should be denied. In addition, to the extent these requests demand that the government take some legal position with respect to certain overt acts, that is not a proper purpose of a bill of particulars, and the request should be denied. It should also be noted that the defendants are in possession of the recorded conversations supporting the overt acts in question. In no pleading has any defendant challenged the identity of defendant Fariz as the other speaker, nor has anyone challenged the substance of the conversation. In overt acts 240 and 247, it is alleged that defendants Fariz and Ballut were discussing a person the government now believes is not co-defendant Abd Al Aziz Awda. According to just the summary of the substance of the conversation alleged in the overt acts, the participants are discussing the secretive transfer of funds from the United States to a place outside the United States. Of course, at the trial, the government will offer into evidence the total conversations described in the four overt acts, as well as corroborating and explanatory information. Therefore, the government does not concede that the allegations contained in overt acts 236, 240, 247 and 253 are void.

F. Defendant Hammoudeh

Although defendant Hammoudeh filed a separate motion for a bill of particulars, his motion mirrors that of defendant Fariz. He merely substituted his name for that of defendant Fariz where appropriate. His memorandum of law is virtually identical to that of defendant Fariz. Therefore, the government can and does apply its response to defendant Fariz's motion to defendant Hammoudeh's motion. Defendant Hammoudeh's motion should be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by facsimile and U.S. mail this 27th day of October, 2003, to the following:

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